

Nia C. Mathis
Direct Dial: (202) 637-2179
nia.mathis@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Boston	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Silicon Valley
Milan	Singapore
Moscow	Tokyo
	Washington, D.C.

DOCKET FILE COPY ORIGINAL

October 25, 2004

VIA HAND DELIVERY

RECEIVED

OCT 25 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
236 Massachusetts Ave., NE
Suite 110
Washington, DC 20002

Federal Communications Commission
Office of Secretary

Re: **In the Matter of ACS Wireless, Inc. Petition for Waiver of Section 54.307(c)
of the Commission's Rules; CC Docket No. 96-45**

Dear Ms. Dortch:

Enclosed for filing in the above proceeding please find the original and four (4) copies of *In the Matter of ACS Wireless, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules*.

Also enclosed is a "Stamp and Return" copy of this filing, which we ask to be stamped with the FCC's date of filing and then returned to our messenger.

Thank you for your assistance.

Respectfully submitted,

Nia C. Mathis

Nia C. Mathis
of LATHAM & WATKINS LLP

Enclosures

No. of Copies rec'd 014
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 25 2004

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
ACS Wireless, Inc.)	CC Docket No. 96-45
)	
Petition for Waiver of Section 54.307(c))	
of the Commission's Rules)	
)	
WAIVER – EXPEDITED ACTION REQUESTED)	

**ACS WIRELESS, INC. PETITION FOR WAIVER OF
SECTION 54.307(c) OF THE COMMISSION'S RULES**

ACS Wireless, Inc. ("ACSW"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,¹ hereby petitions the Commission for a waiver of the Interstate Common Line Support (ICLS) line-count data submission deadline found in Section 54.307(c) of the Commission's rules. Grant of this Petition would allow ACSW to receive ICLS as of July 30, 2004, the date ACSW was designated a competitive eligible telecommunications carrier ("CETC") by the Regulatory Commission of Alaska ("RCA").

I. INTRODUCTION AND SUMMARY

ACSW is a small regional wireless carrier providing mobile and fixed voice and data communications services to approximately 96,000 wireless subscribers throughout Alaska. On July 30, 2004, the RCA designated ACSW as a CETC in the rural study areas served by ACS of Fairbanks, Inc. and Matanuska Telephone Association, Inc. The RCA found that granting

¹ See 47 C.F.R. §§1.3; 1.925. Pursuant to §1.1105 of the Commission's rules, there is no filing fee associated with this request.

ACSW designation as a CETC would improve customers' ability to obtain wireless services and would provide customers more choices for meeting their communications needs.²

Pursuant to Section 254(e) of the Communications Act of 1934, as amended (the "Act"), and Sections 54.904 and 54.307 of the Commission's rules, as a designated CETC, ACSW is entitled to receive ICLS. As a prerequisite for receiving such support, a CETC serving in the study area of a rate-of-return carrier must submit line-count data pursuant to the schedule set forth in Section 54.307(c), accompanied by a carrier certification as required by Section 54.904.

ACSW requests that the Commission waive the line-count submission deadline so that it may submit the information necessary for it to receive funding as of the date it was designated as a CETC. Specifically, ACSW requests that the Commission waive the March 30, 2004 and July 31, 2004 line-count submission deadlines and direct the Universal Service Administrative Company ("USAC") to accept retroactively-filed September 30, 2003 and December 31, 2003 line-count data as timely filed. Grant of the waiver would allow ACSW to receive ICLS as of July 30, 2004, the date it was designated as a CETC. As set forth below, grant of the requested waiver would be consistent with Commission precedent and would serve the public interest.

II. REQUEST FOR WAIVER

A. Factual Background for Waiver of Section 54.307(c) (Line-count Submission Deadlines)

CETCs that serve customers in study areas served by a rate-of-return carriers are eligible to receive ICLS pursuant to Sections 54.307 and 54.904 of the Commission's rules. Thus, ACSW is qualified to receive ICLS in the both the Matanuska and ACS of Fairbanks study areas.

² *In the Matter of the Request by ACS Wireless, Inc. for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under Telecommunications Act of 1996*, Docket No. U-03-16, Order No. 5 (July 30, 2004) at p.12 ("RCA Order"). A copy of the Order is attached as Exhibit A.

In order for a CETC to receive such support, it must submit quarterly working loop data (or “line-count” data) pursuant to the dates set forth in Section 54.307(c).³ It must also file a certification pursuant to Section 54.904(a), with its first line count submission and annually on June 30th thereafter, that the support will be used for its intended purposes.⁴ The Commission’s rules do not specify the funding period to which the quarterly line-count data submissions relate. However, USAC ties its distribution of quarterly ICLS payments to the quarterly filings set forth in Section 54.307(c).⁵

Specifically, in calculating ICLS, USAC uses line-count data filed on March 30 to calculate third quarter support; line-count data filed on July 31 to calculate fourth quarter support; line-count data filed on September 30 to calculate first quarter support; and line-count data filed on December 30 to calculate second quarter support.⁶ On September 23, 2004, ACSW timely filed the line-count data and ICLS self-certification letter required in order to receive funding in the first quarter of 2005.⁷ However, in order to receive ICLS as of the date it was designated a CETC, ACSW must seek waiver of both the March 30 and July 31 line-count deadlines.⁸

³ See 47 C.F.R. §54.307(c),(d).

⁴ See 47 C.F.R. §54.904(a), (c), (d).

⁵ *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 at ¶ 2 (rel. Sep. 3, 2004).

⁶ *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 at ¶ 2 (rel. Sep. 3, 2004).

⁷ A copy of the self-certification letter is attached as Exhibit B.

⁸ In addition, if required in order to receive ICLS as of July 30, 2004, ACSW respectfully requests waiver to submit another self-certification letter contemporaneously with its March 30 and July 31 line-count submissions, as the Commission deems necessary.

As stated, ACSW was designated a CETC on July 30, 2004 – a full four months *after* the March 30, 2004 deadline for submission of the line-count data that USAC would have used to determine ACSW's support level for third quarter 2004 and just *one business day before* the July 31, 2004 deadline for submission of the line-count data that USAC would have used to determine the ACSW's support levels for fourth quarter 2004. ACSW could not have met the March 30 deadline for the obvious reason that it did not become a CETC until four months later. Similarly, the timing of ACSW's CETC designation made it impossible for it to meet the July 31 deadline. As discussed further below, ACSW could not predict when its CETC designation would occur, and could not have gathered line-count data for filing on the next business day after its CETC grant. Thus, ACSW should not be penalized for not meeting the March 30 or July 31 line-count submission deadlines that would have allowed it to receive support for the third and fourth quarter 2004.

B. Grant of this Petition Would Be Consistent with Commission Precedent and Would Serve the Public Interest

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁹

Federal courts also have recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”¹⁰ Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹¹

There is ample precedent that waiver is warranted under this standard if a CETC was unable to meet line-count filing deadlines due to its CETC designation date.¹² In adopting the universal service filing deadlines, the FCC did not intend to create a process that disadvantages carriers receiving the CETC designation subsequent to a filing deadline.¹³ ACSW could not have met the March 30, 2004 line-count deadline because its CETC designation occurred several months *after* the deadline had passed. Neither could ASCW have met the July 31 deadline, because it was notified of its CETC designation on the afternoon of July 30, 2004 – just one business day before the deadline. Line-count data takes well over one business day to prepare. The fact that its CETC designation fell just one business day prior to the July 31 deadline placed

⁹ See 47 C.F.R. §1.925(b)(3).

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166 (citing *WAIT Radio*, 418 F.2d at 1159).

¹² See *Grande Order* at ¶ 1 and *Centennial Order* at ¶ 1. See also *RFB Order*; *Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003); *Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003) (“*Western Wireless Order*”).

¹³ See *Grande Order* at ¶ 9; *Centennial Order* at ¶ 8.

ACSW in a very unique circumstance. The Commission's rules did not require ACSW to file line-count data *prior to* its CETC designation.¹⁴ Similarly, it would be unreasonable to expect CETC applicants to prepare line count filings for every deadline in the off chance that their CETC designation would be granted at the eleventh hour. One business day was simply not enough time for ACSW to have compiled and filed the line-count data. As such, ACSW requests that the Commission waive both the March 30 and July 31 deadlines.

The Commission has stated that in considering waiver petitions, it “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”¹⁵ Thus, in deciding the instant waiver request, the Commission may consider the particular difficulties faced by ACSW in meeting the July 31st deadline. In addition, in granting previous waiver requests to CETCs, the Commission has acknowledged that strict application of its filing deadlines may have the effect of penalizing newly designated CETCs.¹⁶ As a result, on several occasions the Commission has waived Sections 54.307(c) filing deadlines where the timing of the carriers' CETC designations precluded them from timely filing line-count data.¹⁷ Like the CETCs in those orders, ACSW could not have possibly met the March 30

¹⁴ See *Grande Order* at ¶ 11 (“we note that a carrier *may* file line-counts in anticipation of receiving ETC designation *but is not required to file such line-counts.*” (emphasis added)).

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 at ¶ 4 (rel. Sep. 3, 2004).

¹⁶ See *Grande Order*, *supra* note 7, *Centennial Order*, *supra* note 7; *RFB Order* at ¶ 6; *Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003) (“*Guam Cellular Order*”); *Western Wireless Order* at ¶ 5.

¹⁷ See *Grande Order* at ¶ 1; *Centennial Order* at ¶ 1. See also *RFB Order*; *Western Wireless Order*; *Guam Cellular Order*.

filing deadline, which preceded its CETC designation date by four full months. Similarly, ACSW could not have met the July 31, 2004 filing deadline when it was designated as a CETC one business day before the deadline.

ACSW's factual circumstances are distinguishable from those before the Commission in petitions that it has denied. In those orders, the carriers' excuses for missing the deadlines had nothing to do with the timing of its CETC designation; these carriers were granted CETC status well before the line-count deadlines for which they sought waiver. For example, the Commission denied a waiver petition where a carrier received its CETC designation *more than one month before* the line-count filing deadline, but missed the filing deadline. The Commission concluded that the carrier's stated "inexperience" with line-count filing procedures was not good cause enough to waive the deadline.¹⁸ Similarly, the Commission refused to waive the line-count filing deadline, where a carrier missed the deadline by three months because of "confusion over the applicable deadlines for each universal service support offering."¹⁹ The Commission did not "find it onerous to deny South Slope three months of ICLS when it missed the deadline due to its own error."²⁰

Unlike these carriers, ACSW is not claiming that inexperience, confusion or internal error caused it to miss the filing deadlines. Instead, ACSW could not have met the March deadline, which expired before ACSW was even designated a CETC. Further, ACSW could not have met

¹⁸ *In the Matter of Federal-State Joint Board on Universal Service, FiberNet LLC Petition for Waiver of 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-1287 (rel. May 6, 2004).

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 (rel. Sep. 3, 2004).

²⁰ *In the Matter of Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket 96-45, DA 04-2878 at ¶ 5 (rel. Sep. 3, 2004).

the July 31 filing deadline when it was designated as a CETC on July 30. The timing of ACSW's ETC designation effectively precluded it from filing on July 31, because of the concrete business reality that it could not have produced line-count data by the next business day. Therefore, ACSW respectfully requests that the Commission take into account the special circumstances that faced ACSW and waive both the March 30 and July 31 line-count deadlines.

The Commission has recognized that "it would be onerous to deny an ETC receipt of universal service support for almost two quarters" as a result of its ETC designation having occurred after the filing deadline.²¹ Similarly, it would be onerous to deny ACSW universal service funding under these circumstances. The filing deadlines set forth in the Commission's rules create an unintended consequence with respect to ACSW by delaying universal service support several months beyond the date of its ETC designation. The result is inequitable and unduly burdensome to ACSW and frustrates the underlying purpose of the Commission's rules.

Furthermore, denying support to ACSW merely because of the timing of its CETC designation would place it at a competitive disadvantage as compared to other CETCs, in contravention of the Commission's principle of competitive neutrality. As the Commission has observed on several occasions, "competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications."²² Thus, the Commission should grant ACSW's waiver request to waive the March and July filing deadlines set forth in Section 54.307(c).

²¹ See *Western Wireless Order* at ¶ 7.

²² See *Grande Order* at ¶ 10. See also *Western Wireless Order* at ¶ 8; *Federal State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432, 20478-79, ¶¶ 89-90 (1999), *reversed in part remanded in part*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

III. REQUEST FOR EXPEDITED TREATMENT

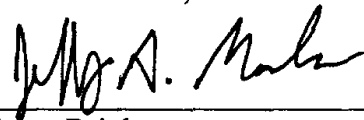
ACSW requests expedited action on this waiver request. ACSW and the Alaska communities that it serves should not be deprived of ICLS for over five months as a result of the unintended effect of the quarterly filing deadlines of 54.307(c). Unduly delaying ACSW's receipt of support under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost and rural areas. ACSW has been providing service subject to the requirements of CETC status since July 30, 2004, but has not yet received the universal service ICLS for which it should be eligible. For this reason, expedited action is warranted and would serve the public interest.

IV. CONCLUSION

For the reasons stated herein, ACSW respectfully requests that the Commission grant this Petition without delay. The Commission should direct USAC to accept retroactively-filed September 30, 2003 and December 31, 2003 line-count data as timely, in order to allow ACSW to receive ICLS as of July 30, 2004, the date it was designated as a CETC by the RCA.

Respectfully Submitted,

ACS WIRELESS, INC.



Karen Brinkmann

Jeffrey A. Marks

Nia C. Mathis

LATHAM & WATKINS, LLP

555 Eleventh Street, N.W., Suite 1000

Washington, D.C. 20004

(202) 637-2200

karen.brinkman@lw.com

jeffrey.marks@lw.com

nia.mathis@lw.com

Counsel for ACS Wireless, Inc.

Leonard A. Steinberg
General Counsel
ALASKA COMMUNICATIONS SYSTEMS
GROUP, INC.
600 Telephone Avenue, MS 65
Anchorage, AK 99503
(907) 297-3000

Dated: October 25, 2004

EXHIBIT A

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3
4 Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

7 In the Matter of the Request by ACS
8 WIRELESS, INC. for Designation as a Carrier
9 Eligible to Receive Federal Universal Service
Support Under Telecommunications Act of 1996

U-03-16

ORDER NO. 5

10 ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER
11 STATUS AND REQUIRING FILINGS

12
13 BY THE COMMISSION:

14 Summary

15 We grant ACS Wireless, Inc.'s (ACSW) application for status as an
16 eligible telecommunications carrier (ETC) for purposes of receiving federal and state
17 universal service funding in the areas served by ACS-F¹ and Matanuska Telephone
18 Association, Inc. (MTA). We require ACSW to file an affidavit certifying that it will
19 advertise its services under the minimum criteria set forth in this Order. We require
20 ACSW to annually file information with us describing its use of universal service funds
21 (USF). We also require ACSW to file updated build-out information and to report to us if
22 there is no possibility of providing service to its customers upon reasonable request.

23
24
25 ¹ACS of Fairbanks, Inc. d/b/a Alaska Communications Systems, ACS Local
26 Service, and ACS (ACS-F).

Background

ACSW filed its *Application*² on May 27, 2003, requesting designation as an ETC to receive federal universal support throughout the areas served by ACS-F and MTA. ACSW stated that it filed its *Application* because of market conditions and the presence of support granted to other carriers that compete directly for the same customers.³ By Order U-03-16(1), we required ACSW to supplement the *Application* with information to explain how it would provide Lifeline and Link Up services and how it would provide services using its own facilities and the services of other carriers, including in-service dates by exchange.⁴ We allowed an additional comment period for public response to ACSW's additional information. No public comments were received.

In its *Response* to Order U-03-16(1),⁵ ACSW stated that it will adopt the seven-step plan we approved for Ak DigiTel to meet its ETC service obligations in

²ACS Wireless, Inc. *Request for Designation as an Eligible Telecommunications Carrier*, filed May 27, 2003. (*Application*).

³Alaska DigiTel, LLC (Ak DigiTel) was granted ETC status in the service area currently served by MTA. See Order U-02-39(10), dated August 28, 2003. Docket U-02-39 is titled: *In the Matter of the Request by ALASKA DIGITEL, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under Telecommunications Act of 1996*.

GCI Communication Corp. d/b/a General Communication Inc. and d/b/a GCI (GCI) was granted ETC status in the Fairbanks study area. See Order U-01-11(1), dated August 28, 2001. Docket U-01-11 is titled: *In the Matter of the Request by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI for Designation as a Carrier Eligible To Receive Federal Universal Service Support Under the Telecommunications Act of 1996 for the Fairbanks, Fort Wainwright, and Juneau Areas*.

⁴See Order U-03-16(1), dated October 24, 2003.

⁵ACSW's *Supplemental Filing in Response to Order No. 1 (Response to Order No. 1)*, filed November 10, 2003.

1 Docket U-02-39.⁶ In addition, ACSW proposed basic rate allocation, and terms and
2 conditions for providing Lifeline and Link Up services.

3 We then required ACSW to file additional information concerning customer
4 benefits it would provide if granted ETC status for USF support.⁷ We also required
5 ACSW to file information on its build-out and upgrade plans and its compliance with the
6 Federal Communications Commission's (FCC) emergency service requirements. We
7 allowed an additional 30 days for public response to ACSW's additional information. No
8 public comments were received.

9
10 ⁶In Order U-02-39(10), we approved the seven step plan Ak DigiTel proposed for
serving customers. Under the plan,

11 a) if Ak DigiTel can serve within its existing network, Ak DigiTel will
12 immediately serve the customer;

13 b) if the customer is not in an area where Ak DigiTel currently provides
service,

14 Ak DigiTel will:

15 Step 1: determine whether the customer's equipment can be modified or
replaced to provide acceptable service;

16 Step 2: determine whether a roof-mounted antenna or other network
equipment can be deployed at the premises to provide service;

17 Step 3: determine whether adjustments at the nearest cell site can be
made to provide service;

18 Step 4: determine whether a cell-extender or repeater can be employed to
provide service;

19 Step 5: determine whether there are any other adjustments to network or
customer facilities that can be made to provide service;

20 Step 6: explore the possibility of offering the resold services of carriers
with facilities available to that location;

21 Step 7: determine whether an additional cell site can be constructed to
22 provide service, and evaluate the costs and benefits of using scarce high-cost support
to serve the number of customers requesting service.

23 ⁷See Order U-03-16(2), dated January 27, 2004.
24
25
26

1 On February 26, 2004, ACSW filed its build-out plans, its then available
2 rate plans, and additional information on FCC emergency service requirements as
3 Order U-03-16(2) required.⁸ ACSW also petitioned to classify certain information in its
4 supplemental filings as confidential, stating that the confidentiality interest outweighed
5 the public interest. Because we believe that the public interest is better served if
6 information regarding build-out plans of ETC applicants remains public, we denied
7 ACSW's petition to keep its planned locations for new cell sites and letters from certain
8 individuals confidential.⁹

9 In a recent order,¹⁰ the FCC defined the factors it considered important in
10 reviewing the application of a competitive ETC in a rural service area.¹¹ The FCC later
11 clarified its policies in *Highland Cellular*.¹²

12 Although not controlling, we concluded that some of the FCC's recent
13 policies have merit. We therefore required ACSW to file maps showing a detailed
14 description of the proposed study areas for which it requests ETC designation. We also
15 required ACSW to provide maps to illustrate its current coverage area relative to the

16
17 ⁸ACSW's *Supplemental Information in Response to Order No. 2 (Response to*
18 *Order No. 2)*, filed February 26, 2004. ACSW filed two versions of its response; a
19 redacted version which excluded information regarding its planned build-out locations
20 for new cell sites, and the unredacted version which identified ACSW's planned
21 locations for new cell sites.

22 ⁹See Order U-03-16(3), dated March 26, 2004.

23 ¹⁰See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC*
24 *Petition for Designation as an Eligible Telecommunications Carrier in the*
25 *Commonwealth of Virginia (Virginia Cellular)*, CC Docket No. 96-45, Memorandum
26 Opinion and Order, FCC 03-338, rel. January 22, 2004.

¹¹*Id.* at para. 4.

¹²See *Federal-State Joint Board on Universal Service, Highland Cellular, Inc.*
Petition for Designation as an Eligible Telecommunications Carrier in the
Commonwealth of Virginia (Highland Cellular), CC Docket 96-45, Memorandum Opinion
and Order, FCC-04-37, rel. April 12, 2004.

1 service areas of ACS-F and MTA.¹³ ACSW submitted the information required by
2 Order U-03-16(4) on July 6, 2004.¹⁴

3 Discussion

4 Under the Telecommunications Act of 1996 (the Act)¹⁵ we have the
5 authority to grant ETC status to a telecommunications carrier. We may also impose
6 conditions to assure that the public interest is served.¹⁶

7 ETCs are eligible to receive support to provide, maintain, and upgrade
8 facilities and services for the telecommunications services and functions defined by
9 federal regulation at 47 C.F.R. § 54.101.¹⁷ Under federal law, an ETC must provide the
10 supported universal telecommunications service throughout a defined service area.¹⁸ In
11 addition, the applicant must meet the following criteria for ETC status: (a) demonstrate
12 that it owns at least some facilities; (b) demonstrate its capability and commitment to
13 provide the Nine Basic Services required by FCC regulation;¹⁹ (c) reasonably show that
14 granting designation as an ETC is in the public interest; and (d) show that upon
15
16
17
18

19 ¹³See Order U-03-16(4), dated June 15, 2004.

20 ¹⁴ACSW's *Supplemental Information in Response to Order No. 4*, filed July 6,
21 2004 (*Response to Order No. 4*).

22 ¹⁵Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)
amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

23 ¹⁶*Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

24 ¹⁷47 U.S.C. § 254(e).

25 ¹⁸47 C.F.R. § 54.201(d).

26 ¹⁹The Nine Basic Services are defined at 47 C.F.R. § 54.101.

1 obtaining ETC status, the applicant will be able to offer and will advertise the availability
2 of the services supported by the federal USF.²⁰

3 1. Ownership of Facilities

4 ACSW has cellular facilities in both ACS-F and MTA service areas.
5 ACSW stated that it will provide service using its own facilities or, if necessary, its own
6 facilities in combination with resale of services of another carrier, such as MTA. In
7 addition, ACSW provided locations and status of its currently operational cell sites.
8 ACSW holds licenses to provide cellular service and Personal Communications Service
9 (PCS) in the Alaska Basic Trading Areas BTA014 and BTA136 that cover both the
10 ACS-F and MTA service areas.²¹

11 ACSW's current facilities do not cover the entire MTA and ACS-F service
12 areas and ACSW has not upgraded all its operational cell sites for *Code Division*
13

14 ²⁰Section 214(e)(1) and (2) of the Act provides:

15 (1) A common carrier designated as an eligible telecommunications carrier under
16 paragraph (2), (3), or (6) shall be eligible to receive universal service support in
17 accordance with section 254 of this title and shall, throughout the service area for which
the designation is received –

18 (A) offer the services that are supported by Federal universal service
19 support mechanisms under section 254(c) of this title, either using its own
20 facilities or a combination of its own facilities and resale of another carrier's
services (including the services offered by another eligible telecommunications
carrier); and

21 (B) advertise the availability of such services and the charges therefor
22 using media of general distribution.

23 (2)...Before designating an additional eligible telecommunications carrier for an
24 area served by a rural telephone company, the State commission shall find that the
25 designation is in the public interest.

26 ²¹ACSW's Cellular Licenses (Call Signs) KNKN204 and KNKA 480, respectively.
ACSW's PCS licenses KNLF936, KNLG973, and KNLG363. See *Application*, Exhibit A,
for coverage of BTA014 trading area.

1 Multiple Access (CDMA) coverage.²² In addition, ACSW must continue to serve the
2 most remote parts of the MTA area with its *Time Division Multiple Access* (TDMA) and
3 *Advance Mobile Phone Service* (AMPS) networks while it transitions to CDMA. ACSW
4 stated that with access to federal USF it will develop its network in both the MTA and
5 Fairbanks areas.²³ While this shows that ACSW does not hold facilities in all portions of
6 the MTA and ACS-F service area, there is still adequate record for us to conclude that
7 ACSW meets the "ownership of facilities" test.

8 While section 214(e)(1) of the Act requires an ETC to "offer" the services
9 supported by the federal universal service support mechanisms, this does not require a
10 competitive carrier to actually provide the supported services throughout the designated
11 service area before designation as an ETC.²⁴ As a result, ACSW's lack of facilities
12 throughout the proposed ETC service areas at this time does not, in and of itself, make
13 ACSW ineligible for ETC status.

14
15
16
17 ²²ACSW stated that its CDMA system is capable of providing *Assisted-Global*
18 *Positioning Satellite* (A-GPS) location technology.

19 ²³During the first year after obtaining funding, ACSW plans to construct CDMA
20 facilities in Greenwood, Ester Dome, Cushman, University of Alaska at Fairbanks,
21 Browns Hill Quarry, Road Ft Knox, Golden Valley Electric Association, Inc. P/C, Chena
22 Hot Springs, Lazy Mountain, Mirror Lake and Eagle River Valley, Alaska. In its second
23 year of funding, ACSW plans to begin construction of CDMA facilities in Healy, Nenana,
24 Cantwell, Houston, Willow, Talkeetna, Clear, Caswell, Peterville, and Big Lake South,
25 Alaska. By 2006, ACSW plans to construct new CDMA facilities in Sutton, Chikaloon,
26 Sheep Mountain, and Hatcher Pass, Alaska. See *Response to Order No. 2*, Exhibit A
at 2.

²⁴*Federal-State Joint Board on Universal Service; Western Wireless Corporation*
Petition for Preemption of an Order of the South Dakota Public Utilities Commission,
Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-73 (2000).

2. Capability and Commitment

ACSW must provide enough information to demonstrate its ability to provide each of following Nine Basic Services designated by the FCC,²⁵ including Lifeline and Link Up services, or obtain a waiver.²⁶ In the *Application*, ACSW stated that it currently offers all Nine Basic Services to its customers, and it commits to provide all nine services throughout its proposed service area, including Lifeline and Link Up services,²⁷ upon receiving universal service funds.²⁸ A summary of the Nine Basic Services and ACSW's current services are shown below.

Nine Basic Services (47 C.F.R. § 54.101)	ACSW's Current Services
1) Voice grade access to the public switched network (including Lifeline and Link Up services)	ACSW provides voice grade access to the public switched network through interconnection arrangements with local telephone companies.
2) Local usage	ACSW has different rate plans which offer "local usage."
3) Dual tone multi-frequency signaling or its functional equivalent	ACSW provides both out-of-band and in-band multi-frequency signaling, the functional equivalent of dual tone multi-frequency signaling.
4) Single-party service or its functional equivalent	ACSW provides single party service, as described under 47 C.F.R. § 54.101(a)(4) – "single party service for wireless carriers is a dedicated message path for the length of a user's particular transmission."

²⁵ See n. 19.

²⁶ The FCC allows a state commission to grant waiver of the requirement to provide single-party access to enhanced 911, and toll limitation services to allow additional time for a carrier to complete network upgrades necessary to provide service. 47 C.F.R. § 54.101(c).

²⁷ Lifeline and Link Up services are services offered by ETCs to qualifying low-income customers. Link Up is described at 47 C.F.R. § 54.411(a), and Lifeline is described at 47 C.F.R. § 54.401(a).

²⁸ *Application*, at 7-9.

1	5) Access to emergency services ²⁹	ACSW currently provides 911 access to emergency services.
2	6) Access to operator services	ACSW provides its customers access to operator services by dialing "0".
3	7) Access to interexchange services	ACSW provides its customers access to interexchange services. ACSW also stated that it has entered into agreements with interconnecting carriers to provide access to the interexchange network.
4		
5		
6	8) Access to directory services	ACSW provides its customers access to directory services, its customers can dial "411" or "555-1212" on their mobile telephones to reach directory assistance.
7		
8		
9	9) Toll limitation for qualifying low-income consumers	ACSW can readily implement toll limitation for qualifying low-income consumers, its equipment has toll blocking capabilities.
10		

11 Although ACSW may be providing the nine basic services to its existing
12 customer base, a question remains whether ACSW would be capable of providing the
13 services to all customers reasonably requesting service within the MTA and ACS-F
14 areas. In response to this issue, ACSW agreed to adopt the seven-step approach we
15 approved for Ak DigiTel³⁰ to meet its ETC obligations to offer services, upon
16 reasonable request, throughout the MTA and ACS-F areas, including areas where it
17 does not currently have facilities.³¹ We find this is a reasonable strategy for providing
18 service throughout the study area, but we add one additional requirement. We require
19

20 ²⁹Access to emergency services includes access to services, such as 911 and
21 enhanced 911, provided by local governments or other public safety organizations.
22 47 C.F.R. § 54.101(a)(5). 911 is a service that permits a telecommunications user, by
23 dialing the three-digit code "9-1-1," to call emergency services through a Public Service
24 Access Point (PSAP) operated by the local government. "Enhanced 911" is a 911
25 service that includes the ability to provide automatic number identification (ANI) and
26 automatic location information.

³⁰See n. 6.

³¹See ACSW's *Motion of ACS Wireless, Inc. for Issuance of an Initial Scheduling Order*, filed October 6, 2003, at 2.

1 ACSW to report to us if it cannot provide service without constructing a new cell site.
2 The report must state the estimated cost of construction and ACSW's position on
3 whether the request for service is reasonable and whether high-cost funds should be
4 expended on the request. We imposed a similar requirement on Ak DigiTel in Order
5 U-02-39(10). We will address any ACSW requests to deny service on a case-by-case
6 basis. If ACSW unreasonably fails to serve customers throughout its designated
7 service area, we would have cause to revoke its ETC status.

8 Although we find that ACSW has generally demonstrated that it would be
9 capable of providing the Nine Basic Services, we conclude that two of these services,
10 access to emergency services, and Lifeline and Link Up services, warrant further
11 discussion.

12 Emergency Services

13 The FCC provided deployment deadlines to wireless carriers in
14 implementing Phase II 911 enhanced services in the *Non-Nationwide Carriers Order*
15 and reporting requirements for Tier III carriers.³² ACSW filed a letter to the FCC
16 requesting relief from the deployment schedules set out in the *Non-Nationwide Carriers*
17 *Order*. Given ACSW's request for waiver of emergency services deadlines, we sought
18 further information from ACSW to further understand its capability of providing
19 emergency services.

20 ACSW stated that it is currently providing basic 911 services in the
21 Fairbanks and MTA areas.³³ With its *Time Division Multiple Access* (TDMA) and

22
23 ³²See *Revision of the Commission's Rules to Ensure Compatibility with*
24 *Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for*
25 *Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay (*Non-Nationwide*
26 *Carriers Order*), FCC 02-210, (rel. July 26, 2002), at 13, para. 34.

³³*Response to Order No. 2*, at 12.

1 Advance Mobile Phone Service (AMPS) network, ACSW transmits its customer's 911
2 emergency call from the cell site where the 911 originates to the PSAP serving that
3 area. ACSW stated that with its *Code Division Multiple Access* (CDMA) network it is
4 capable of providing Phase I and Phase II, Enhanced 911 services.³⁴ ACSW provided a
5 letter from the manufacturer of its CDMA system, Nortel Networks, confirming that its
6 CDMA system is capable of providing Phase I and Phase II E911 services. While
7 ACSW is not fully compliant with the requirements of the FCC in implementing Phase I
8 and Phase II, Enhanced 911 services at this time, we believe that ACSW has
9 demonstrated its ability to meet the emergency services requirement associated with
10 ETC status.

11 Lifeline and Link Up Services

12 ACSW committed to provide Lifeline and Link Up services. ACSW stated
13 that for its qualified customers, ACSW will offer a basic Lifeline rate of one dollar while
14 Link Up customers will be able to subscribe for service at no charge.³⁵ ACSW also
15 provided a means test for customers to be eligible under the Lifeline and Link Up
16 services.³⁶ We are currently reviewing proposed regulations that would determine
17 criteria to identify customers eligible to participate in the Lifeline and Link Up
18 programs.³⁷ Our decision in this proceeding may require ACSW to revise its means test
19 for customers to be eligible under the Lifeline and Link Up services.

20 3. Public Interest Determination

21 In a recent decision evaluating an ETC application, the FCC stated:

22 ³⁴ See 47 C.F.R. § 54.101(a)(5).

23 ³⁵ Response to Order No. 1, at 2-4.

24 ³⁶ Id. at 4-5.

25 ³⁷ See Docket R-03-6 titled *In the Matter of Proposed Regulations Implementing*
26 *Lifeline and Link Up Eligibility Policies*.

1 "the value of increased competition, by itself, is not sufficient to satisfy the
2 public interest test in rural areas. Instead, in determining whether
3 designation of a competitive ETC in a rural telephone company's service
4 area is in the public interest, we weigh numerous factors, including the
5 benefits of increased competitive choice, the impact of multiple
6 designations on the universal service fund, the unique advantages and
7 disadvantages of the competitor's service offering, any commitments
8 made regarding quality of telephone service provided by competing
9 providers, and the competitive ETC's ability to provide the supported
10 services throughout the designated service area within a reasonable time
11 frame."³⁸

12 We agree with the FCC that evaluation of the public interest requires
13 review of a variety of factors and cannot simply rest on "increased competition."

14 ACSW stated that its designation as an ETC will benefit consumers
15 because it will provide improved services and technology, more choices for consumers,
16 improved service quality and public safety. ACSW also stated that it will offer improved
17 service to underserved customers who do not have access to high speed data service.
18 ACSW further stated that its customers will benefit from a larger facilities-based network
19 which will result in fewer "dead spots" and dropped calls. ACSW stated that with its
20 CDMA system, it will give customers better choices of digital wireless services, including
21 data service.

22 We find that granting ACSW's ETC application will improve customers'
23 ability to obtain wireless services, providing customers more choices for meeting their
24 communications needs. Low-income customers who otherwise would be unable to
25 afford wireless service will be able to obtain service using the Lifeline and Link Up
26 discounts. Although ACSW did not offer a rate plan based on receipt of universal
service support, it did however provide its current basic rate plans with local usage,

³⁸Virginia Cellular, para. 4.

1 which provides an amount of minutes of use of exchange service free of charge to end
2 users.³⁹

3 The mobility of ACSW's service also serves the public interest. Although
4 mobility is not one of the supported services, it is a convenience to the public. Mobile
5 service provides critical access to health and safety services when customers are at
6 home or away from their homes.

7 We do not currently regulate the quality of service by ACSW,⁴⁰ and we do
8 not have sufficient evidence to define quality of service standards for wireless carriers.
9 However, if we receive customer complaints, we may examine whether ACSW is
10 meeting its ETC obligations throughout the service area. We may also consider ETC
11 service quality in a regulations docket upon petition or on our own motion.

12 ACSW asserted that ETC designation would allow it to expedite its
13 build-out plans for additional cell sites. ACSW expects to reach CDMA coverage with
14 A-GPS capability for 75 percent of the population of the Matanuska-Susitna Borough by
15 2005. By the end of 2004, ACSW expects to have 93 percent of its CDMA coverage of
16 the Fairbanks Borough population. Such expansion of facilities may improve service
17 quality, which would also be in the public service.

18 Advertising Services

19 Section 214(e)(1)(B) of the Act requires an ETC to advertise the
20 availability of the Nine Basic Services (including Link Up and Lifeline) and the charges
21 for the services using "media of general distribution."
22
23

24 ³⁹Response to Order No. 4, at 10, fn. 8.

25 ⁴⁰See also 47 U.S.C. § 332.
26

1 In Order U-97-187(1), dated December 19, 1997, the APUC⁴¹ required
2 MTA to meet the following minimum criteria to ensure appropriate and sufficient
3 customer notification of its services:⁴²

4 a) once every two years MTA must perform community outreach
5 through appropriate community agencies by notifying those agencies
6 of ACSW's available services;

7 b) once every two years MTA must post a list of its services on a
8 school or community center bulletin board in each of the utility's
9 exchanges;

10 c) once a year MTA must provide a bill stuffer indicating its available
11 services; and

12 d) once a year MTA must advertise its services through a general
13 distribution newspaper at the locations it serves.⁴³

14
15
16
17
18
19
20 ⁴¹The Alaska Public Utilities Commission (APUC or Commission) was the
21 predecessor to this agency. We assumed the responsibilities of the APUC on July 1,
22 1999 under Ch. 25, SLA 1999.

23 ⁴²In the following paragraphs addressing minimum advertising requirements,
24 "services" referred to those services for which MTA receives universal service support.
25 MTA was not required to advertise nonsupported services.

26 ⁴³Order U-97-187(1) at 16. Docket U-97-187 is titled *In the Matter of the Request
by MATANUSKA TELEPHONE ASSOCIATION, INC., for Designation as a Carrier
Eligible to Receive Federal Universal Service Support Under the Telecommunications
Act of 1996.*

1 We required ACS-F to meet the same advertising requirements set for
2 MTA when we granted ACS-F ETC status.⁴⁴ We believe these standards are also
3 appropriate for ACSW. Therefore, we require ACSW to meet the same advertising
4 requirements as the incumbents and file an affidavit detailing its compliance with the
5 established standards when it has definitive dates for advertising and is ready to provide
6 service.

7 In summary, we find that granting ETC status to ACSW is in the public
8 interest. We conclude that ACSW adequately demonstrated that it met all other criteria
9 necessary to allow award of ETC status. We therefore grant ETC status to ACSW.

10 Conditions on ETC Status

11 Annual Certification

12 We monitor the continued appropriate use of universal service funding in
13 our rural markets by requiring annual certification by all designated ETCs, including
14 Ak DigiTel. Accordingly, we require ACSW to file the same information required of all
15 other rural ETCs in Alaska through our annual use-of-funds certification process.

16 Build-out Plans

17 ACSW indicated that it plans to build-out its network in the MTA and
18 Fairbanks areas. ACSW further stated that high-cost support will help recover its cost
19 of deployment. ACSW also stated that it cannot predict or guarantee a future
20 construction schedule without knowing when its ETC application will be granted.⁴⁵ With
21

22
23 ⁴⁴See Order U-97-180(1), dated December 19, 1997. That proceeding is titled: *In*
24 *the Matter of the Request by PTI Communications of Alaska, Inc., for Designation as a*
25 *Carrier Eligible to Receive Federal Universal Service Support Under the*
26 *Telecommunications Act of 1996.*

⁴⁵See Response to Order No. 4, at 4.

1 the approval of ACSW's ETC application, we require ACSW to clarify the record
2 regarding its build out plans as explained below.

3 In its *Response to Order No. 2*, ACSW provided information indicating the
4 number and location of its existing cell sites, including its build-out schedule from 2004
5 to 2006. In its *Response to Order No. 4*, ACSW stated that it had constructed several
6 CDMA cell sites in the ACS-F and MTA service areas, and expects to complete
7 deployment of its CDMA network in the ACS-F service area by summer of 2004. It
8 appears that ACSW's build-out schedule filed on February 26, 2004, has significantly
9 changed based on its statements in its *Response to Order No. 4*. We therefore require
10 ACSW to file updated information showing its current existing cell sites, and build-out
11 schedule. That record will assist us to monitor ACSW's progress in its network
12 expansion and upgrade.

13 *Joint Board Recommendation*

14 The Federal-State Joint Board on Universal Service issued its
15 recommendation⁴⁶ concerning the process for designation of ETCs and the payment of
16 universal service funds. The policies the FCC ultimately adopts in light of the Joint
17 Board recommendation may materially affect markets and consumers in Alaska. We
18 may re-evaluate all ETCs, including ACSW, after the FCC issues a decision on the
19 *Recommended Decision*.

20 This Order constitutes the final decision in this phase of the proceeding.
21 This decision may be appealed within thirty days of the date of this order in accordance
22 with AS 22.10.020(d) and the Alaska Rules of Court, Rule of Appellate Procedure

23 ⁴⁶See *In the Matter of Federal-State Joint Board on Universal Service*,
24 *Recommended Decision*, CC Docket 96-45, rel. February 27, 2004 (*Recommended*
25 *Decision*).

(Ak. R. App. P.) 602(a)(2). In addition to the appellate rights afforded by AS 22.10.020(d), a party has the right to file a petition for reconsideration as permitted by 3 AAC 48.105. If such a petition is filed, the time period for filing an appeal is then calculated under Ak. R. App. P. 602(a)(2).

ORDER

THE COMMISSION FURTHER ORDERS:

1. The application filed by ACS Wireless, Inc. for designation as a carrier eligible to receive federal universal service support under the Telecommunications Act of 1996 in the study areas of ACS of Fairbanks, Inc. d/b/a Alaska Communications Systems, ACS Local Service, and ACS, and Matanuska Telephone Association, Inc., is granted.

2. By 4 p.m., August 30, 2004, ACS Wireless, Inc. shall file certification, supported by an affidavit, demonstrating that it will advertise its services as specified in the body of this Order.

3. By 4 p.m., August 30, 2004, ACS Wireless, Inc. shall provide updated information concerning its build-out and upgrade as specified in the body of this Order.

1 4. ACS Wireless, Inc. shall file as if it were a regulated carrier in
2 response to our requests for information for the annual use-of-funds certification to the
3 Federal Communications Commission.

4 DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of July, 2004.

5 BY DIRECTION OF THE COMMISSION
6 (Commissioners Kate Giard, Chairman,
7 and Dave Harbour, not participating.)
8
9

10 (S E A L)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT B

Interstate Common Line Support (ICLS)

2004

Date

To: Mariene H. Dortch
Office of the Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Irene M. Flannery
Vice President - High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, DC 20036

Re: CC Docket No. 96-45
Interstate Common Line Support - ICLS
Annual Certification Filing

This is to certify that ACS Wireless will use its Interstate Common Line Support - ICLS only for the provision, maintenance and upgrading of facilities and service for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the study area(s) listed below.

Company Name	State	Study Area Code
ACS Wireless	Alaska	-643685 619005

(If necessary, attach a separate list of additional study areas and check this box.)

Signed,



[Signature of Authorized Representative]

Date: 9-23-04

Thomas R. Meade

[Printed Name of Authorized Representative]

V.P. Carrier Market & Economic Analysis

[Title of Authorized Representative]

Carrier's Name: ACS Wireless

Carrier's Address: 600 Telephone Avenue, Anchorage, AK 99503

Carrier's Telephone Number: 907-564-1935